THE HON'BLE MR JUSTICE B. SUDERSHAN REDDY

and

THE HON'BLE MR JUSTICE S.ANANDA REDDY

WRIT PETITION NO : 19505 of 2005

Dated 14/09/2005

Between:

K.Mohan Rao, S/o.Venkata Subbaiah,
R/o.120, Sanampudi, Singarayakonda, Prakasam district.

..... PETITIONER

AND

1 The Regional Transport Authority, Ongole, Prakasam district.
2 D.Sudhakar Rao, The Motor Vehicle Inspector, Ongole, Prakasam district.

.....RESPONDENTS

THE HON'BLE SRI JUSTICE B. SUDERSHAN REDDY

and

THE HON'BLE SRI JUSTICE S.ANANDA REDDY

WRIT PETITION NO : 19505 of 2005

Oral Order: (per Sri BRSR,J)

None appears on behalf of the petitioner when the matter is taken up for hearing both in the morning and as well as in the afternoon. We have elaborately heard the learned Government Pleader for Transport.

The petitioner invokes the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India with a prayer to issue a writ of Mandamus declaring the check report dated 22.7.2005 as illegal, arbitrary and void. The petitioner also prays

for issuance of consequential directions directing the respondents to issue the tax token for the vehicle No. AP 27 V 7330.

The petitioner is the owner of the vehicle bearing No. AP 27 V 7330. The national permit granted by the 1st respondent is valid up to 11.4.2010. The fitness certificate of the vehicle was also valid up to 12.4.2005. According to the averments made in the affidavit filed in support of the application, the tax paid by the petitioner is valid up to 30.6.2005. The last date for payment of tax to the next quarter is 30.7.2005. It is alleged that on 25.7.2005 "some employees of the transport department came and informed" the petitioner that he is required to pay some fine and if the same is not paid, the vehicle would be seized. On the same day, the petitioner claims to have visited the R.T.O. office and approached the 2nd respondent along with a D.D for a sum of Rs.5,470/- for payment of tax and it is at that stage he was informed about there being a check report against the vehicle. He requested to supply a copy of the check report but the 2nd respondent refused to supply the same. However, the 1st respondent directed a copy of the check report to be supplied and the same was supplied to him. The allegations made in the check report are that when the vehicle was proceeding towards Chennai with a load of iron HB coils, it was found carrying excess load of 22390 kgs as per weighing slip No.1433 and the driver has not produced the fitness certificate, permit, driving license, PVC and no proof of tax payment. All these allegations made in the vehicle check report are denied.

The petitioner claims to have approached the respondents with a written representation but the concerned authorities refused to receive the DDs from him.

The sum and substance of the allegations made in the affidavit are that on 19.7.2005 the vehicle was at Wardha, Maharastra State. On the same day one Tirupathi Balaji Roadlines (India) engaged the vehicle for transportation of goods i.e. iron HR coils from Wardha to Chennai. The weight of the goods loaded in the vehicle was 16410 kgs and the vehicle reached Chennai in the night on 23.7.2005. The vehicle, in fact, was not seized by the 2nd respondent as mentioned in the check report. The copies of the waybill dated 19.7.2005 and the transit outgoing receipt issued at Tada is filed along with the writ petition. It is asserted that on 22.7.2005 the vehicle was not at Ongole and not even in the State of Andhra Pradesh and it was not seized as stated in the check report. The 2nd respondent has no authority in law to insist to pay the penalty by refusing to receive the tax. It is under those circumstances, the petitioner

invoked the jurisdiction of this Court under Article 226 of the Constitution of India.

The Regional Transport Authority, Ongole, Prakasam district filed a very detailed and comprehensive affidavit together with all the relevant documents in which it is inter alia stated that the Motor Vehicle Inspector of Ongole stopped the vehicle in question and asked the driver to produce the records of the vehicle and directed the driver to bring the vehicle for weighment. The driver reluctantly got the vehicle to the weigh bridge and it was found that the total weighment of the vehicle showed 47390 kgs vide the weighment receipt No.1433 dated 22.7.2005 as against the total weight of the vehicle being
25000 kgs. It was found that the vehicle was carrying excess load of 22390kgs. The driver having kept the vehicle at the RTO's office escaped without informing anybody and without taking the vehicle check report from the Motor Vehicle Inspector. The vehicle was accordingly handed over to the night watchman at the RTO's office and obtained his signature.

That on 25.7.2005, the petitioner has approached the RTO and complained that the office is not accepting the quarterly tax and pleaded that there is no case pending against the vehicle. On verification, it was found that the vehicle check report dated 22.7.2005 issued by the MVI Ongole was pending against the vehicle in question and a copy of the same was handed over to the owner in the presence of the RTO. The petitioner was accordingly requested to pay all the dues. The petitioner instead of complying with the same, has taken away the seized vehicle in the midnight of 22.7.2005. On 28.7.2005, the RTO has received a letter from the petitioner stating that he had received the vehicle check report dated 25.7.2005 but the same was not visible and readable. Then the RTO had got the original VCR typed and handed over the same to the petitioner. The petitioner thereafter, sent the DD for Rs.5,470/- towards the quarterly tax, which was provisionally accepted but as promised by him he did not pay the compounding fee as against the check report dated 22.7.2005.

During the course of enquiry, it was found that the petitioner paid a sum of Rs.23,700/- as is evident from the challan dated 3.9.2005 towards the dues against the vehicle check report dated 22.7.2005. It is admitted that there are no dues against the said vehicle as at present.

The fact that the vehicle was subjected to check on 22.7.2005 and the irregularities mentioned therein were noticed by the Motor Vehicle Inspector has not been put in

issue by way of filing any reply affidavit by the petitioner though the matter was adjourned at the request of the learned counsel for the petitioner for filing reply affidavit. It is thus clear that the petitioner approached this Court by making false and irresponsible allegations against the respondents. The petitioner could not have removed the vehicle from the custody of the authorities in the midnight without their prior permission. The petitioner, in the instant case, undoubtedly has taken the law into his hands and approached this Court with unclean hands making reckless allegations against the respondents. The petitioner has paid the compounding fee of Rs.23,700/- as is evident from the original challan bearing No.438 dated 3.9.2005. This fact, of course, could not have been stated in the affidavit filed in support of the writ petition since the writ petition was filed on 1.9.2005. But there cannot be any doubt that the petitioner withheld this particular fact from the Court by not filing any additional affidavit or a reply affidavit even after service of counter affidavit on the learned counsel for the petitioner.

The petitioner abused the judicial process and made an attempt to secure the release of the vehicle and having failed in his attempt paid the compounding fee on 3.9.2005 even while the writ petition was pending. We are duty bound to notice the reprehensive conduct of the petitioner. No relief could be granted to the petitioner.

The writ petition shall stand dismissed with costs quantified at Rs.5000/- payable to the 1st respondent within four weeks from today. If the costs are not paid within the stipulated period, it shall be open to respondent No.1 to proceed against the petitioner for realization of the said amount.

(B.SUDERSHAN REDDY,J)

dated 14.9.2005

(S.ANANDA REDDY,J)

msv